IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10058 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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STTE OF GUJARAT

Versus

SHANKERBHAI TRIKAMBHAI VASAVA

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Appearance:

1. Special Civil Application No. 10058 of 2000

MR DIGANT P. JOSHI AGP for Petitioners No. 1-1/3

MR PH PATHAK for Respondent No. 1

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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 16/01/2002

C.A.V. JUDGEMENT

1. By way of this petition under Articles 226 and 227 of the Constitution, the petitioner - State, through its officers of the Roads and Building Department - has

challenged the award of the Labour Court, Bharuch in Reference (LCB) No.224 of 1998, whereby the respondent is ordered to be reinstated with 40% backwages.

2. After the reference of the dispute under the Industrial Disputes Act, 1947 (the Act), the claim of the respondent was resisted on the grounds that he was in judicial custody from 31.3.1992 upon being arrested in connection with the offence punishable under Sections 302 and 114 of the Indian Penal Code and had remained absent on duty since then. It was also denied that the workman was made permanent on his post and was illegally discharged from service. The same grounds were sought to be agitated before this Court.

3. After recording of and appreciation of the evidence on record, the Labour Court has, in the impugned award, arrived at the findings of facts to the effect that the respondent was confirmed in service on 1.3.1990 after entering into the service on 1.5.1976. According to the respondent, he was not being taken on the job since 10.4.1992 for which he had also given a notice dated 18.5.1992. After his arrest on 31.3.1992, the respondent was released on bail and also subsequently acquitted in the criminal case but was neither taken on the job nor were any disciplinary actions taken against him. Thus, the case of the respondent that he was discharged from his permanent service without following any legal procedure stood proved and the Court was inclined to order reinstatement with 40% backwages in the facts and circumstances.

4. The learned counsel for the respondent conceded that in absence of any evidence regarding alternative employment of the respondent from either side, in view of the reference having been made after six years and on instructions and on condition that he may be immediately reinstated, the respondent would forego the backwages and the petition may be allowed to that extent. The learned Assistant Government Pleader made a statement on instructions that the respondent shall be immediately reinstated without backwages.

5. In view of the facts and circumstances discussed hereinabove and no jurisdictional or any other error, much less an error apparent on the face of the record, having been pointed out in the impugned award, the same is confirmed except to the extent that the part of the award ordering payment of 40% backwages is set aside. Accordingly, the petition is partly allowed and the impugned award is modified so as to deny backwages to the

respondent. Rule is made absolute accordingly with no order as to costs. The respondent shall be reinstated on his original post without backwages latest by 30.1.2002.

Sd/-
( D.H.Waghela, J.)

(KMG Thilake)